



PUBLIC NOTICE

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DA 08-881

Released: April 15, 2008

WIRELESS TELECOMMUNICATIONS BUREAU ACCEPTS 37 CONSTRUCTION NOTIFICATIONS IN THE LOCAL MULTIPOINT DISTRIBUTION SERVICE

Licensees in the Local Multipoint Distribution Service (LMDS) may provide any service consistent with the Commission's Rules and their regulatory status,¹ subject to a ten-year term from the initial license grant date.² At the end of the ten year period, licensees are required to submit an acceptable showing to the Commission demonstrating that they are providing "substantial service" in each licensed area.³ The Commission defined "substantial service" as "service that is sound, favorable, and substantially above a level of mediocre service that just might minimally warrant renewal."⁴ The purpose of the substantial service showing is to "promote efficient use of the spectrum, encourage the provision of service to rural, remote, and insular areas, and prevent the warehousing of spectrum."⁵ Failure by any licensee to meet this requirement will result in forfeiture of the license and the licensee will be ineligible to regain it.⁶

The Commission elaborated on what may constitute "substantial service" for LMDS by offering some specific examples, which are sometimes referred to as "safe harbors," to provide LMDS licensees with a degree of certainty as to how to comply with the substantial service requirement by the end of the initial license term.⁷ The Commission explained that an LMDS licensee that chooses to offer fixed, point-to-point services may fall within a "safe harbor" by constructing four permanent links per one million people in its licensed service area.⁸ The Commission also elaborated that an LMDS licensee electing to

¹ See 47 C.F.R. § 101.1013(b).

² See Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5 GHz Frequency Band, to Reallocate the 29.5-30.0 GHz Frequency Band, to Establish Rules and Policies For Local Multipoint Distribution Service and For Fixed Satellite Services, CC Docket No. 92-297, *Second Report and Order, Order on Reconsideration and Fifth Notice of Proposed Rulemaking*, 12 FCC Rcd 12545, 12656-12657 ¶ 259 (1997) ("*Second LMDS Report and Order*"). Pursuant to 47 C.F.R. § 101.67, LMDS licenses are issued for a period not to exceed ten years.

³ See 47 C.F.R. § 101.1011(a); see also *Second LMDS Report and Order*, 12 FCC Rcd at 12658 ¶¶ 261-262.

⁴ *Second LMDS Report and Order*, 12 FCC Rcd at 12658 ¶ 261; see also *id.* at 12660 ¶ 269.

⁵ *Second LMDS Report and Order*, 12 FCC Rcd at 12659 ¶ 266.

⁶ See 47 C.F.R. § 101.1011(a).

⁷ See *Second LMDS Report and Order*, 12 FCC Rcd at 12660-12661 ¶¶ 269-270.

⁸ See *Second LMDS Report and Order*, 12 FCC Rcd at 12660 ¶ 270.

deploy point-to-multipoint services may fall within a “safe harbor” by demonstrating coverage to 20 percent of the population in the licensed BTA.⁹ The “safe harbors” only serve as examples of what may constitute substantial service, and the Commission reviews licensees’ showings on a case-by-case basis.¹⁰

By this public notice, we accept the construction notifications filed for the 37 LMDS licenses listed in Appendix A. We find that the substantial service showings attached to those construction notifications demonstrate that the licensees have sufficiently built out the licenses in each LMDS market to satisfy the Commission’s substantial service requirement set forth in Section 101.1011(a) of the Commission’s Rules.¹¹ Specifically, we find the licensees’ construction in each BTA satisfies either the point-to-point safe harbor or the point-to-multipoint safe harbor. We therefore conclude that these applicants have made a sufficient substantial service showing for the licenses listed in Appendix A.

Accordingly, we accept these notifications pursuant to Section 309(a) of the Communications Act of 1934, as amended, 47 U.S.C. § 309(a), and Sections 0.131 and 0.331 of the Commission’s Rules, 47 C.F.R. §§ 0.131, 0.331, because it will serve the public interest, convenience and necessity.

For further information, contact Brian Michael Wondrack, Esq., of the Broadband Division, Wireless Telecommunications Bureau at (202) 418-0653, TTY (202) 418-7233, or via e-mail to Brian.Wondrack@fcc.gov.

By the Acting Chief, Broadband Division, Wireless Telecommunications Bureau.

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⁹ See *Second LMDS Report and Order*, 12 FCC Rcd at 12660 ¶ 270.

¹⁰ See *Second LMDS Report and Order*, 12 FCC Rcd at 12660-12661 ¶ 270. For example, the Commission may also consider such factors as whether the licensee is offering a specialized or technologically sophisticated service that does not require a high level of coverage to be of benefit to customers, and whether the licensee’s operations serve niche markets or focus on serving populations outside of areas served by other licensees. See *Second LMDS Report and Order*, 12 FCC Rcd at 12660 ¶ 270.

¹¹ 47 C.F.R. § 101.1011(a).